IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1214 OF 2003
IN
SUIT NO.1182 OF 2003

Mrs.Rita Premchand and Anr. .. Plaintiffs

Vs.

State of Maharashtra ..Defendants

Mr.D.H.Mehta with Mr.N.Engineer i/b RMG Law for the plaintiffs

Mr.P.G.Lad, A.G.P. for defendant no.1 and 2

Mr.Suresh Mali for defendant no.3

CORAM : S.U.KAMDAR, J
DATED : 16TH SEPTEMBER, 2005

P.C.:

1. The present Notice of Motion is taken out for appointment of Court Receiver, High Court, Mumbai and injunction directing defendant no.1, 2 and 4 to onceagain demarcate the plaintiffs' plot and permit the plaintiffs to put up complete fencing all over the boundaries of the plaintiffs' said property situated at Survey Nos.267 and 268 of Village Manori situated in Sub-District Thane. In prayer clause (c), (d) and (e) injunction is prayed in respect of the aforesaid property.

2. In the present suit, plaintiffs are claiming title under registered Deed of conveyance dated 25.2.99 executed between plaintiff and Hirjeebhoy Manekjee Varanwala. In the suit prayers are that the plaintiffs be declared that they are the owners in respect of said property situated at Survey Nos. 267 and 268 situated at Village Manori in Sub-District Thane and that they are to entitled to exclusive, vacant and peaceful possession of the said property. Defendant no.1 is seeking to challenge the title of the plaintiff and therefore the present suit is filed.

3. Defendant no.1 claims that defendant no.1 is the owner in respect of said property and conveyance in favour of plaintiff is invalid and void. It is the case of defendant no.1 that the property never belonged Hirjee Manekjee Varanwala and therefore there is no question of title being passed from the said original owner to the plaintiff herein. In Support of the aforesaid argument the learned counsel for the plaintiff has relied upon various revenue entries indicating that

the name of the plaintiff is not shown on revenue records and it is the government who is the owner of the said land. In fact at one stage, defendant no.1 has passed an order claiming the title in the property. The said order became the subject matter of challenge in writ petition before this court being Writ Petition No.441 of 1997. in para 7 an d 8 of the said writ petition it has been stated as under.

> "7. The principle of law is well settled, that entries in the revenue records are not dispositive or conclusive on questions of title. The revenue records create no title and are relevant only for fiscal purposes. Reference may be made in this regard to the Judgment of the Supreme Court in Jattu Ram v. Hakam Singh (1993) 4 SCC 403. The Petitioners are hence at liberty to adopt such remedies as are open to them in law for asserting their claim to title.
>
> 8. There is, however, substance in the grievance which has been urged on behalf of the Petitioners to the effect that the S.D.O. has overstepped his jurisdiction, while deciding upon the question of a mutation of the revenue records, by issuing a direction to the effect that the lands should be taken possession of land should be handed over to the State Government. In the matter such as this, the State Government must necessarily observe due process of law land when a

> party is in settled position on the basis of a claim of some antiquity as in the present case, it would not be appropriate for the S.D.O. to pass a direction of the kind which has been issued in the present case. In the circumstances, the present Petition must succeed and the impugned order passed by the S.D.O. is liable to be quashed. It is, however, clarified that no opinion has been expressed by the Court on the legitimacy of the claim to title made by the Petitioners or for that matter in respect of the claim of the Government that the lands were Government lands in respect of which no title could have been passed in 1889 in favour of the Petitioners. It would be open to the first Respondent, to adopt any proceeding in accordance with the provisions of the Maharashtra Land Revenue Code, 1966 for correcting the revenue records. The Petitioners should be allowed an opportunity of being heard in any such proceeding land of placing all relevant documentary material on which they seek to rely on the record, Should the Government adopt this course of action, the petitioners would be at liberty to adopt such remedies as are open to them in law including remedies which they may have for the purposes asserting their claim to title."

4. It is the case of defendant no.1 that pursuant to order given by learned single Judge in the said Writ Petition government has passed the order u.s.20 sub section 2 of the Maharashtra Land

Revenue Code 1966 determining the dispute as to the title of the property between the plaintiff and defendant no.1. Under the said provision of s.20 sub section 2 of the Maharashtra Land Revenue Code, Sub Divisional Officer has declared that Government is a owner of the property. It is his contention that in the light of the said order plaintiff is not entitled to any relief in the present suit. It is now well settled to repeat that any orders passed under the provisions of Maharashtra Land Revenue Code pertaining to revenue records cannot determine the title of the properties. In the present case State Government is claiming title in respect of the said property and I am afraid to hold that s.s.2 of s.20 of the Maharashtra Land Revenue Code Officer cannot govern and determine whether title is vested in the government or not. Basic principle of law is person who has interest in the subject matter of the dispute cannot be a Judge in his own course.

5. Apart from the aforesaid, under the orders passed by this court in Writ Petition No.441 of 1997 this court has given liberty to the plaintiffs

to file a suit claiming right in respect of the suit property under deed of conveyance which the plaintiffs have done by filing present suit. At this stage it is not possible to accept the contention of the defendants that the plaintiffs do not have title in the property. Registered deed of conveyance is prima facie evidence as to the title of the property. If the defendants are seeking to challenge such a deed of conveyance and want to challenge the right in the property of the plaintiffs then under Section 31 of the Specific Relief Act, 1963 defendant no.1 is required to file a suit seeking cancellation of such conveyance and in such suit plaintiffs would require to establish the validity or otherwise of such conveyance. In absence of such a suit the government cannot establish title in the said property by the revenue entries or by passing orders by S.D.O. under the provisions of Maharashtra Land Revenue Code 1966. It is equally well settled in law that the rights of the plaintiffs in the property flowing from registered conveyance cannot be affected unless such conveyance is set aside by court of competent Jurisdiction.

6. In that view of the matter, right of the plaintiffs are required to be protected. Ad interim granted by the learned single Judge was modified by the Appellate court. In that view of the matter, I confirm the said ad-interim order as modified by the appellate court. Motion disposed of accordingly. There shall be no order as to costs.